



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 70

[EPA-R04-OAR-2021-0363; FRL-10016-01-R4]

Air Plan and Operating Permit Program Approval; TN; Electronic Notice (e-notice)

Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Tennessee State Implementation Plan (SIP) and the Tennessee title V operating permit program (title V) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Division of Air Pollution Control on March 23, 2021, and supplemented on July 1, 2022. These changes address the public notice rule provisions for the New Source Review (NSR) and title V programs of the Clean Air Act (CAA or Act) by providing for electronic notice (e-notice) and removing the mandatory requirement to provide public notice of a draft air permit in a newspaper. EPA is proposing to approve these changes as they are consistent with the CAA and implementing Federal regulations.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0363 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or

comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, EPA finalized revised public notice provisions for the NSR, title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule revisions removed the mandatory requirement to provide public notice of permitting actions through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and title V rules, such as Tennessee's EPA-approved permitting programs. Permitting authorities are not required to adopt e-notice. Nothing in the revised rules prevents a permitting authority with an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. For permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use "a consistent noticing method" for all permit notices under the specific permitting program. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit for the duration of the public comment period.

EPA anticipates that e-notice, which is already being practiced by many permitting authorities, will enable permitting authorities to communicate permitting and other affected

actions to the public more quickly and efficiently and will provide cost savings over newspaper publication. EPA further anticipates that e-access will expand access to permit-related documents. A full description of the e-notice and e-access provisions are contained in EPA's October 18, 2016 rulemaking notice. *See* 81 FR 71613.

EPA is proposing to approve changes to Rule 1200-03-09-.01, *Construction Permits*; and Rule 1200-03-09-.02, *Operating Permits*, of Chapter 1200-03-09, *Construction and Operating Permits* submitted by the State of Tennessee on March 23, 2021,¹ related to NSR, and title V permits. These changes seek to establish a revised method of publication of public notices for public hearings and public comment periods and change how documents related to permit proceedings will be available for public inspection.

II. EPA's Analysis of Tennessee's Submittal

The SIP and title V program revisions change Chapter 1200-03-09, *Construction and Operating Permits*, to allow e-notice for TDEC's minor NSR, Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and title V regulations at Rules 1200-03-09-.01, *Construction Permits*; and 1200-03-09-.02, *Operating Permits*.² In this proposed action, EPA is proposing to approve the following changes to Rules 1200-03-09-.01 and 1200-03-09-.02.

Rule 1200-03-09-.01(1) *Application for Construction Permit* applies to construction permits in general, including minor source construction permits, and subparagraph (h) is revised to change the monthly public notification method for permit applications from newspaper to e-notice on the Department's website and specify that comments must be submitted via U.S. mail or email. While this is a generally applicable construction permitting rule, where other program rules, such as for the major source programs – PSD, NNSR, and title V, have more specific

¹ In a letter dated July 1, 2022, TDEC clarifies that it is requesting approval of revisions to its title V program as well as to the SIP to provide for e-notice.

² As discussed in more detail in the description of changes to the title V program below, the revisions to the public participation provisions would also change the State's public participation method to e-notice for the SIP-approved Federal enforceable state operating permits (FESOPs) program.

requirements, those requirements listed in their respective paragraphs of 1200-03-09-.01 and 1200-03-09-.02 apply.

The State's PSD program at Rule 1200-03-09-.01(4), *Prevention of Significant Air Quality Deterioration*, is revised to provide for e-notice. First, subparagraph (a)7(vi) is revised to provide e-notice on the Department's website rather than newspaper notification whenever the Technical Secretary of the Air Pollution Control Board of the State of Tennessee rescinds a permit. Next, subparagraph (l)2(iii) is revised to provide e-notice on the Department's website rather than newspaper notification of permit applications, preliminary determinations, and expected increment consumption for PSD permitting actions. This subparagraph is further updated to require the Department to post notice of public comment, draft permits, information on how to access the administrative record for the draft permit, and how to request and/or attend a public hearing on the draft permit on the Department's website for the duration of the comment period. As described above, posting draft permits on a designated website is required for consistency under 40 CFR 51.166(q)(2)(iii), when e-notice is provided.

The State's NNSR requirements are at Rule 1200-03-09-.01(5), *Growth Policy*, and subparagraph (b)2(viii)(III) is revised to provide e-notice on the Department's website rather than newspaper notification whenever the Technical Secretary of the Air Pollution Control Board of the State of Tennessee rescinds a permit. Next, subparagraph (b)3(i)(III) is revised to provide e-notice of information submitted by applicants and the Technical Secretary's analysis of the effect on air quality. The e-notice will be available on the Department's website for the duration of the comment period and includes draft permits, information on how to access the administrative record for the draft permit, and how to request and/or attend a public hearing on the draft permit. Similar to PSD requirements, posting draft permits on a designated website is required for consistency under 40 CFR 51.165(i)(1), when e-notice is provided. This subparagraph is also updated to provide further notice in newspapers of general circulation in the

area where the source is located at the applicant's expense, if deemed necessary by the Technical Secretary.

The State's title V requirements are at Rule 1200-03-09-.02(11), *Major Stationary Source Operating Permits*, and subparagraph (f)8.(i)(I) is revised to provide for e-notice on the Department's website of permit proceedings that require public notice, including initial permit issuance, significant modifications and renewals. The SIP's FESOP provisions are found at Rule 1200-03-09-.02(11)(a), which provide an option for sources to limit their potential to emit such that they are below the major source applicability threshold. In order to exercise this option, Rule 1200-03-09-.02(11)(a) states that the permit shall be subjected to the opportunity for comment and hearing by EPA, affected states, and the public consistent with this paragraph. Thus, the FESOP permits must be public noticed consistent with the requirements at Rule 1200-03-09-.02(11)(f)8, which is revised to include e-notice.³

Furthermore, in accordance with 40 CFR 70.7(h)(1), Rule 1200-03-09-.02(11)(f)8.(i)(I) is updated to require the Department post draft title V permits on the Department's website for the duration of the public comment period. As described above, posting draft permits on a designated website is required for consistency under the Federal rules, when e-notice is provided.

The State is replacing the public notice method for the aforementioned permit programs from newspaper publication to website notification as well as providing for e-access to draft permits. These methods of public notification and availability are consistent with the public participation requirements for permits under 40 CFR 51.161, 51.166(q), 51.165(i), and 70.7 and the criteria for FESOP programs (see 54 FR 27274 (June 28, 1989)).

In addition, this SIP submission contains minor textual changes to provide clarity and greater consistency. The textual revisions include: changing "publication of" to "date of", adding

³ The changes to Rule 1200-03-09-.02(11)(f)8.(i)(I) discussed in this notice apply to FESOPs; however, this specific provision is not approved into the SIP and is not being proposed for incorporation into the SIP. For purposes of FESOPs, only Rule 1200-03-09-.02(11)(a) is approved into the SIP. See EPA's final approval of Tennessee's FESOP program at 62 FR 6724 (February 13, 1997) for more information on this program and associated public notice requirements.

“permit” before referencing recissions, clarifying that the public must be notified of the degree of increment consumption that is expected from both the proposed source construction and modification, and changing “Sub part” to “subpart”.

EPA is proposing to approve these revisions because the revisions are consistent with the SIP revision requirements of CAA section 110, the title V program revision requirements of 40 CFR 70.4, and EPA’s permitting requirements for public participation.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Rule 1200-03-09-.01, *Construction Permits*, state effective January 21, 2021, into the Tennessee SIP.⁴ The proposed incorporation includes minor textual changes, establishes a revised means of publication for public notices for public hearing and public comment periods, and changes how documents related to permit proceedings will be available for permit proceedings. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the changes to Chapter 1200-03-09, *Construction and Operating Permits*; Rule 1200-03-09-.01, *Construction Permits* of the Tennessee SIP; and Rule 1200-03-09-.02, *Operating Permits*, of the Tennessee title V program, as submitted on March 23, 2021, and supplemented on July 1, 2022 for the reasons stated above.

⁴ EPA is not proposing to incorporate the January 21, 2021, state effective version of: 1200-03-09-.01(1)(a); 1200-03-09-.01(1)(d); 1200-03-09-.01(1)(f); 1200-03-09-.01(1)(j); 1200-03-09-.01(4)(b)24(XVII); 1200-03-09-.01(4)(b)29; 1200-03-09-.01(4)(b)47(i)(IV); 1200-03-09-.01(4)(j)3; 1200-03-09-.01(4)(k); 1200-03-09-.01(5)(b)1(x)(VII); the PM_{2.5} annual and 24-hour averaging time as part of subparagraph 1200-03-09-.01(5)(b)1(xix); 1200-03-09-.01(5)(b)2(iii)(II). These provisions are either not approved into the SIP or the January 21, 2021, version of the rule contains language changes that are not before EPA for approval into the SIP. If EPA finalizes this action, the Agency will update the SIP table at 40 CFR 52.2220(c) to reflect these exceptions.

V. Statutory and Executive Order Reviews

In reviewing SIP and title V submissions, EPA's role is to approve such submissions, provided that they meet the criteria under the CAA, and EPA's implementing regulations. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in the Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the national Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

Furthermore, the proposed rules regarding title V operating permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these proposed rules impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 19, 2022.

Daniel Blackman,

Regional Administrator,

Region 4.

